

ORIGINAL



0000122914

RECEIVED

2011 FEB -7 P 3:21

AZ CORP COMMISSION
DOCKET CONTROL

FENNEMORE CRAIG, P.C.
Jay L. Shapiro (No. 014650)
Todd C. Wiley (No. 015358)
3003 N. Central Ave.
Suite 2600
Phoenix, Arizona 85012
Attorneys for Litchfield Park Service Company

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF LITCHFIELD PARK SERVICE
COMPANY, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
WASTEWATER RATES AND CHARGES
FOR UTILITY SERVICE BASED
THEREON.

DOCKET NO: SW-01428A-09-0103

IN THE MATTER OF THE APPLICATION
OF LITCHFIELD PARK SERVICE
COMPANY, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
WATER RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

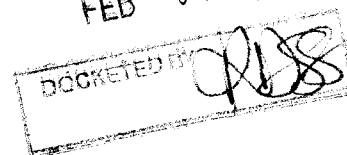
DOCKET NO: W-01427A-09-0104

IN THE MATTER OF THE APPLICATION
OF LITCHFIELD PARK SERVICE
COMPANY, AN ARIZONA
CORPORATION, FOR AUTHORITY (1) TO
ISSUE EVIDENCE OF INDEBTEDNESS IN
AN AMOUNT NOT TO EXCEED \$1,755,000
IN CONNECTION WITH (A) THE
CONSTRUCTION OF TWO RECHARGE
WELL INFRASTRUCTURE
IMPROVEMENTS AND (2) TO
ENCUMBER ITS REAL PROPERTY AND
PLANT AS SECURITY FOR SUCH
INDEBTEDNESS.

DOCKET NO. W-01427A-09-0116

Arizona Corporation Commission
DOCKETED

FEB 7 2011



1 IN THE MATTER OF THE APPLICATION
2 OF LITCHFIELD PARK SERVICE
3 COMPANY, AN ARIZONA
4 CORPORATION, FOR AUTHORITY (1) TO
5 ISSUE EVIDENCE OF INDEBTEDNESS IN
6 AN AMOUNT NOT TO EXCEED \$1,170,000
7 IN CONNECTION WITH (A) THE
8 CONSTRUCTION OF ONE 200 KW ROOF
9 MOUNTED SOLAR GENERATOR
10 INFRASTRUCTURE IMPROVEMENTS
11 AND (2) TO ENCUMBER ITS REAL
12 PROPERTY AND PLANT AS SECURITY
13 FOR SUCH INDEBTEDNESS.

DOCKET NO. W-01427A-09-0120

**LPSCO'S REPLY IN SUPPORT OF
REQUEST FOR CLARIFICATION**

8 Litchfield Park Service Co. ("LPSCO" or "Company") respectfully submits the
9 following Reply in Support of Request for Clarification in this docket. LPSCO files this
10 reply brief in response to the City of Litchfield Park's Response to Request for
11 Clarification docketed on February 2, 2011 ("City Response") in order to address and
12 correct various factual misstatements and inaccuracies contained in the City's Response.
13 Put simply, it is necessary to set the record straight on a number of arguments and issues
14 raised by the City in its response brief. LPSCO respectfully requests that the Commission
15 consider this Reply brief in addressing the scope of rehearing as planned for the next
16 Commission Staff meeting.

17 **I. THE COMMISSION SHOULD ORDER A LIMITED REHEARING.**

18 The ultimate question to be decided or clarified is whether the Commission intends
19 to grant a limited rehearing on the specific issues raised by LPSCO and RUCO in their
20 requests for rehearing/reconsideration; or whether the Commission intends to grant an
21 entirely new hearing without limitation as subsequently requested by the City and RUCO
22 relating to the rate base and cost of capital issues. It should now be abundantly clear to
23 the Commission that the City and RUCO intend to re-litigate the cost of capital and plant
24 issues with additional discovery, new expert witnesses and additional rounds of pre-filed
25 testimony. Re-litigation of the cost of capital and plant issues will result in significant
26 additional resources being expended by this Commission and its Staff, as well as all of the

1 parties, including substantial additional rate case expense for the Company and its
2 ratepayers.¹

3 That's not to mention that allowing RUCO and the City to re-litigate those issues
4 would be patently unfair. RUCO and the City have had a full and fair opportunity to
5 litigate those issues. As noted by Commission Staff, there were eight days of hearing in
6 this case, including substantial time devoted to the plant and return on equity (ROE)
7 issues.² Three engineers (Brian McBride, Ray Jones and Staff Engineer Marlin Scott, Jr.)
8 already have testified on the plant issues and agree that the 2007-2008 Upgrades to the
9 Palm Valley Water Reclamation Facility (PVWRF) were reasonable and prudent when
10 made and currently used and useful. Incredibly, RUCO now proposes to introduce yet
11 another engineering witness, even though RUCO's designated expert (Matt Rowell)
12 expressly testified that the plant upgrades are "not expanding the capacity of the plant"
13 and "that the 2008 upgrades that were installed by LPSCO are used and useful."³ Three
14 cost of capital witnesses already have testified on the ROE issues (Tom Bourassa, Pedro
15 Chaves and Bill Rigsby). It is neither appropriate nor fair to allow the City and RUCO,
16 neither of which timely sought reconsideration, a complete second bite at the apple.

17 Under these circumstances, the Company again urges the Commission to (1) adopt
18 the recommendation of Staff that the rehearing be scheduled for one of the next available
19 dates on Hearing Division's calendar; and (2) clarify that the rehearing is limited to the
20 following specific issues: (a) whether the 8.01% ROE and resulting WACC of 7.76% is
21 fair, reasonable and consistent with applicable law; (b) whether the \$7 million of plant

22 ¹ LPSCO responds below to the City's absurd claim that the Company waived rate case
23 expense for now having to defend, a second time, RUCO's plant claims, and the City's
24 attempt to greatly expand the Company's request for rehearing. In short, waivers have to
be knowing and no one, including the Commission it would appear, knew what the City
and RUCO had in mind.

25 ² The hearing dates were January 4-8, 11 and 14-15, 2010.

26 ³ Ex. A-28, Deposition of M. Rowell, 11/30/2009, at 27, 80. Apparently, RUCO now
intends to introduce another expert to contradict the testimony of its prior expert.

1 upgrades made by LPSCO in 2007-2008 are reasonable and prudent and used and useful
2 as argued in RUCO's request for reconsideration; (c) whether LPSCO's rates can be
3 phased in involuntarily and if they are phased in, should the phase-in schedule in the
4 Decision be modified; and (d) whether the Company may seek and recover reasonable
5 rate case expense for this rehearing/reconsideration proceeding.

6 This limited scope and approach appears to be the intent of the Commission in
7 granting rehearing. At the February 2, 2011 Staff Meeting, Commissioner Newman, who
8 originally moved for rehearing at the January 18, 2011 Staff Meeting, explained that in
9 moving for hearing, he "didn't expect World War III to happen" and he "wasn't expecting
10 re-litigation of the case." Rather, Commissioner Newman only "thought [that] some
11 choice questions might be made to the parties" on the ROE and plant issues.
12 Commissioner Newman also noted that re-litigation of the issues would involve "potential
13 expense to many, many parties," which, in the end, "will have to be paid for by
14 consumers." At the February 2 Staff meeting, Commissioner Newman reiterated that he
15 felt he did not have an adequate opportunity to ask questions at the prior open meetings on
16 the ROE issues, and he concluded by stating that the rehearing "scope needs to be drawn."

17 **II. RESPONSES TO THE CITY OF LITCHFIELD PARK.**

18 In its Response, the City asserts a number of arguments in support of its desire for
19 full re-litigation of the plant and ROE issues. In doing so, the City misstates the
20 underlying record in several respects. As a result, the Company has no choice but to set
21 the record straight on those issues.

22 **A. The City Has Had and Will Continue to Have a Full and Fair**
23 **Opportunity to Address the ROE Issues.**

24 To start, the City contends that "LPSCO seeks to preclude the City from a
25 meaningful opportunity to defend against these claims by depriving the City of the ability
26

1 to present a witness to defend them.”⁴ That claim drastically distorts the record in this
2 case. As noted above, three separate witnesses testified on the ROE and cost of capital
3 issues in this case, including Mr. Bourassa (LPSCO), Mr. Chaves (Staff) and Mr. Rigsby
4 (RUCO). The City had an equal opportunity to present its own cost of capital witness at
5 hearing, but the City decided to present only a rate design expert (Richard Darnall). The
6 Commission should not allow the City to present expert testimony for the first time on
7 rehearing. Not only did the City have a fair chance to present an ROE expert, but the
8 City’s attorney extensively cross-examined Mr. Bourassa, Mr. Chavez and Mr. Rigsby at
9 hearing.⁵ In fact, the City acknowledges that “it did....create a record that allowed the
10 Commission to determine that, based upon the totality of the circumstances, that none of
11 the experts’ recommendations presented during the hearing as to WACC or return on
12 FVRB was reasonable.”⁶

13 There can be no dispute that the City had an opportunity to address the ROE issues
14 and any claim to the contrary is false and misleading. The City would have the same
15 opportunity for cross-examination and investigation of the cost of capital issues at a
16 limited rehearing, at least as envisioned by Commissioner Newman and the Company.
17 For that reason, the Commission should reject the City’s attempt to re-litigate those issues
18 all over again with new witnesses, more pre-filed testimony and additional discovery.

19 **B. The City Misstates the Underlying Record Relating to RUCO’s**
20 **“Engineering Testimony.”**

21 On page 7 of its Response, the City argues that RUCO should be given an
22 “opportunity” to present an engineering witness on the plant issues. What the City should

23 ⁴ City Response at 5.

24 ⁵ Tr. at 526-539, 640-643 (Sullivan cross examination of Bourassa); at 962-989 (Sullivan
25 cross examination of Rigsby); at 1039-1054, 1060-1080 (Sullivan cross examination of
26 Chaves). Mr. Sullivan actually cross examined Mr. Rigsby on his original
recommendation for an ROE of 8.01%. Tr. at 963-965.

⁶ City Response at 6.

1 have said is that it wants to give RUCO a second opportunity to present an engineering
2 witness to support the claims RUCO has already made. In the prior proceedings, Mr.
3 Rowell presented RUCO's position that \$3.5 million of plant should be excluded from
4 rate base. Put simply, RUCO chose to hire an accountant, not an engineer, to address the
5 rate base issues relating to the design and engineering of PVWRF.

6 On November 30, 2009, the Company took Mr. Rowell's deposition. At
7 deposition, Mr. Rowell expressly admitted that he was not qualified to render any
8 opinions on the design, engineering and constructions issues raised by RUCO.⁷ On
9 December 22, 2010, the Company moved to strike Mr. Rowell's testimony on the design
10 and engineering issues because he wasn't properly qualified.⁸ In response, RUCO
11 opposed that motion and argued that "you don't need to be an engineer to look at it and
12 say, hey, look, there was obviously something wrong with the design of these things and
13 that's why these costs were incurred."⁹ RUCO went on to argue that Mr. Rowell was
14 sufficiently qualified as a rate analyst to justify excluding portions of the plant upgrades
15 from rate base.¹⁰ Judge Nodes denied LPSCO's motion to strike and allowed Mr. Rowell
16 to testify on the plant engineering and construction issues. Nearly three full days of
17 hearing were devoted to Mr. Rowell's testimony and the Company's responses to his
18 claims, including testimony by three engineers (Mr. McBride, Mr. Jones and Mr. Scott).

19 As noted above, the Commission should not allow RUCO to re-litigate the plant
20 and engineering issues all over again with another, new expert witness, particularly since
21 RUCO opposed the Company's motion to exclude Mr. Rowell because he wasn't an
22 engineer in the first place. In no uncertain terms, the plant and engineering issues already
23

24 ⁷ Ex. A-28, Rowell Depo. at 14-15.

25 ⁸ Motion to Strike Testimony of Matt Rowell, dated 12/22/2009.

26 ⁹ Transcript of 12/30/2009 Procedural Conference at 16 (comments of D. Pozefsky).

¹⁰ *Id.* at 18.

1 have been extensively addressed, and the parties can address the remaining issues raised
2 by RUCO in further questioning of the engineers and Company witnesses.

3 **C. LPSCO Did Not Waive Its Right to Additional Rate Case Expense.**

4 On page 8 of its Response, the City contends that LPSCO waived its right to
5 additional rate case expense. Unfortunately, the City misconstrues the Company's
6 position. As stated in its Application for Rehearing, LPSCO "is not seeking any increased
7 rate case expense relating to this Application for Rehearing."¹¹ The Company isn't even
8 asking for added rate case expense for drafting and filing its Application for Rehearing.
9 In the event, however, that the Commission adopts a rehearing procedure whereby the
10 cost of capital and rate base issues are going to be subject to additional evidentiary
11 proceedings, which will necessitate additional discovery and briefing, the Company has
12 not waived its right to seek and it will seek additional rate case expense.

13 That's not the Company's choice. LPSCO stands ready to argue this matter
14 without further discovery and the taking of additional evidence. The Company believes
15 that RUCO's collateral attack on the Commission's rate base finding is entirely without
16 merit, and LPSCO believes that the Commission has all it needs to modify the rate of
17 return consistent with Judge Nodes' Recommended Opinion and Order. These matters
18 could be addressed in an open meeting forum where the existing witnesses answer
19 Commissioner questions and the parties present arguments. But if RUCO and the City
20 want full-fledged re-litigation, and the Commission agrees, then the costs of such
21 additional proceedings have to be borne by the Company and the "consumers" as
22 recognized by Commission Newman at the February 2, 2011 Staff Meeting.

23 **III. CONCLUSION.**

24 For the reasons stated above, the Company respectfully requests that the
25

26 ¹¹ LPSCO Application for Rehearing at 20.

1 Commission adopt the recommendation of Staff that the rehearing be scheduled for one of
2 the next available dates on Hearing Division's calendar. Further, the Company requests
3 that the Commission clarify that the rehearing is limited to the following specific issues:
4 (a) whether the 8.01% ROE and resulting WACC of 7.76% is fair, reasonable and
5 consistent with applicable law; (b) whether the \$7 million of plant upgrades made by
6 LPSCO in 2007-2008 are reasonable and prudent and used and useful as argued in
7 RUCO's request for reconsideration; (c) whether LPSCO's rates can be phased in
8 involuntarily and if they are phased in, should the phase-in schedule in the Decision be
9 modified; and (d) whether the Company may seek and recover reasonable rate case
10 expense for this rehearing/reconsideration proceedings. Finally, the Company asks that
11 the Commission clarify that the rehearing will, at a minimum, be limited to the existing
12 witnesses of the parties and will not involve additional witnesses or experts.

13 DATED this 7th day of February, 2011.

14 FENNEMORE CRAIG, P.C.

15
16 By _____

17 Jay L. Shapiro
18 Todd C. Wiley
19 3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attorneys for Litchfield Park Service
Company

20 **ORIGINAL** and thirteen (13) copies
21 of the foregoing were filed
this 7th day of February, 2011, with:

22 Docket Control
23 Arizona Corporation Commission
1200 W. Washington Street
24 Phoenix, AZ 85007

- 1 **Copy of the foregoing was hand delivered**
this 7th day of February, 2011 to:
- 2
- 3 Chairman Gary Pierce
4 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
- 5 Commissioner Paul Newman
6 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
- 7
- 8 Commissioner Sandra D. Kennedy
9 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
- 10 Commissioner Bob Stump
11 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
- 12
- 13 Commissioner Brenda Burns
14 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
- 15 John Le Sueur
16 Advisor to Chairman Gary Pierce
17 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
- 18 Nancy La Placa
19 Advisor to Commissioner Paul Newman
20 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
- 21 Cristina Arzaga-Williams
22 Advisor to Commissioner Sandra D. Kennedy
23 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007
- 24 Amanda Ho
25 Advisor to Commissioner Bob Stump
26 Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

- 1 Tom F. Galvin, Jr.
2 Advisor to Commissioner Brenda Burns
3 Arizona Corporation Commission
4 1200 W. Washington Street
5 Phoenix, AZ 85007
- 6 Sarah Harpring
7 Administrative Law Judge
8 Arizona Corporation Commission
9 1200 W Washington Street
10 Phoenix Arizona 85007
- 11 Dwight D. Nodes
12 Assistant Chief Administrative Law Judge
13 Arizona Corporation Commission
14 1200 W Washington Street
15 Phoenix Arizona 85007
- 16 Robin Mitchell, Esq.
17 Legal Division
18 Arizona Corporation Commission
19 1200 W. Washington Street
20 Phoenix, AZ 85007
- 21 Carmel Hood, Compliance
22 Utilities Division
23 Arizona Corporation Commission
24 1200 W. Washington Street
25 Phoenix, AZ 85007
- 26 **Copy of the foregoing mailed**
this 7th day of February, 2011, to:
- Michelle L. Wood, Esq.
Residential Utility Consumer Office
1110 W. Washington, Suite 220
Phoenix, AZ 85007
- Craig A. Marks, Esq.
Craig A. Marks, PLC
10645 N. Tatum Blvd., Suite 200-676
Phoenix, AZ 85028

1 William P. Sullivan, Esq.
2 Susan D. Goodwin, Esq.
3 Larry K. Udall, Esq.
4 Curtis, Goodwin, Sullivan, Udall & Schwab
5 501 E. Thomas Rd.
6 Phoenix, AZ 85012

7 Martin A. Aronson
8 Robert J. Moon
9 Morrill & Aronson, PLC
10 One E. Camelback Rd., Suite 340
11 Phoenix, AZ 85012

12 Chad and Jessica Robinson
13 15629 W. Meadowbrook Ave.
14 Goodyear, Arizona 85395

15 By: Maria San Jose

16 2392609.1/60199.009